

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	:	
On its Own Motion	:	
	:	
-vs-	:	Docket No. 11-0593
	:	
Commonwealth Edison Company	:	
	:	
Investigation into compliance with the	:	
efficiency standard requirement of Section	:	
8-103 of the Public Utilities Act.	:	

**REPLY BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the instant proceeding. Staff proposes recommendations based on Section 8-103(b) of the Illinois Public Utilities Act (“Act”), as modified by subsections (d) and (e) of that Section, so that the Commission can make a determination of whether Commonwealth Edison Company (“ComEd” or “Company”) met its energy efficiency (“EE”) goals for the Plan Year 3 (“PY3”) which commenced June 1, 2010 and was completed May 31, 2011.

I. BACKGROUND

The Illinois Attorney General (AG), the Commonwealth Edison Company (“ComEd”), and Staff filed Initial Briefs (“IBs”) on May 21, 2013. Many of the arguments

made in the IBs of the AG and ComEd have already been fully addressed in Staff's IB. Thus, Staff stands on its positions set forth in its IB and will not reiterate them here. In this Reply Brief ("RB"), Staff responds to a limited number of issues raised in the IBs of the AG and ComEd.

II. COMMISSION EXERCISE OF REGULATORY AUTHORITY OVER DCEO

The AG asserts that:

Significant outstanding issues exist around the roles and obligations between utilities and DCEO in meeting statutory goals and delivering the energy efficiency portfolio for which the Department is responsible. Related issues around the Commission's authority over DCEO continue to exist and have not been adequately addressed by the utilities, DCEO and the Commission. The [AG] assert[s] that the lack of clear rules on these issues serves as a barrier to capturing maximum cost-effective savings, results in utilities pursuing less efficiency than is appropriate for their efficiency customers' share of the energy load, and creates significant uncertainties around what obligations DCEO and the utilities have, or what remedies are available, if problems in achieving goals occur.

AG IB at 11.

The AG then argues that there is a need for additional Commission oversight of the DCEO component of the portfolios. AG IB at 11, *et seq.* The AG asserts that the allocation of savings goals as between the utilities and DCEO should be the result of agreement between DCEO and each utility. *Id.* at 12-13. The AG then asserts that the ultimate decision regarding this allocation is the Commission's. *Id.* at 13.

The defect in this argument is easily identified. While Staff concurs in the proposition that the Commission has, under some circumstances, the authority to determine the allocation of savings between DCEO and a utility, the statute is clear that the Commission's authority attaches when "there is a lack of agreement [between] the

[DCEO and a utility] with respect to the allocation of responsibilities or related costs or target assignments.” 220 ILCS 5/8-103(e)(emphasis added). “In that case” – and in no other case described in the statute – “the [DCEO] and the utility shall file their respective plans with the Commission and the Commission shall determine an appropriate division of measures and programs that meets the requirements of this Section.” Id. (emphasis added). As such, the statute calls for resolution by the Commission if, and only if, the DCEO and a utility cannot agree regarding allocation.

This alone requires rejection of the AG's argument. There is no evidence whatever that DCEO and ComEd have failed to reach agreement regarding allocation of savings goals in this proceeding. Accordingly, there is no basis for the Commission to resolve the non-dispute between ComEd and DCEO regarding allocation.

The AG describes the Commission's regulation of the DCEO as “amorphous.” AG IB at 14, 15. Insofar as this is true, it is because the Commission has been placed in an unusual position by the terms of the statute, along with the fact that the DCEO is a sister state agency. The Commission has recognized this in the past. See Order on Rehearing at 3, Commonwealth Edison Company: Approval of the Energy Efficiency and Demand Response Plan Pursuant to Section 8-103(f) of the Public Utilities Act, ICC Docket No. 10-0570 (May 11, 2011)(Commission states that it “is not convinced that a blanket statement claiming jurisdiction over DCEO is appropriate or necessary. DCEO is a state agency and there is no clear statement in the statute that the Commission has jurisdiction over DCEO[.]”); Order at 66, Commonwealth Edison Company: Approval of the Energy Efficiency and Demand Response Plan Pursuant to Section 8-103(f) of the Public Utilities Act, ICC Docket No. 10-0570 (December 21, 2010)(DCEO argues that

the Commission has no regulatory authority over DCEO to determine the implementation of programs, and thus cannot order DCEO to carry out its programs in a particular way; the Commission finds that “it appears as though the Commission has limited authority over the DCEO portion of the plan.”); see *a/so* Order at 99, Central Illinois Light Company, Central Illinois Public Service Company, and Illinois Power Company: Verified Petition for Approval of Integrated Electric and Natural Gas Energy Efficiency Plan, ICC Docket No. 10-0568 (December 21, 2010)(Commission acknowledges that it has, in many respects, “limited authority over how DCEO implements its portion of the plan[.]”). These constraints arise directly from the statute, and cannot be wished away.

The AG concedes this, referring to the Commission’s findings in the Order on Rehearing cited above. AG IB at 21(citing ComEd IB). Notwithstanding the Commission’s clearly-expressed construction of the statute, the AG contends that:

[A]s with the Commission’s rules on banking of savings, the Commission’s position on oversight of DCEO programs can likewise evolve over time. While the Commission was clearly “not convinced...a blanket statement claiming jurisdiction over DCEO is appropriate or necessary,” it did not preclude the possibility of a more nuanced position short of a “blanket statement” in the future.

AG IB at 21.

The glaring defect in this assertion is obvious: “banking” of savings is in no way comparable to the Commission’s oversight of DCEO. “Banking” is a practice neither specifically authorized nor prohibited by the statute, which the Commission has nonetheless determined to be reasonable at a de minimus level. Order at 40-41, Commonwealth Edison Company: Petition for Approval of the Energy Efficiency and

Demand-Response Plan pursuant to Section 12-103(f) of the Public Utilities Act, ICC Docket No. 07-0540 (February 6, 2008) ("Plan Year 1 Order"). In contrast, as previously noted, the Commission's authority over DCEO is embedded in statute and cannot "evolve" much in the absence of a statutory amendment.

Lastly, the Commission clearly has authority and "general supervision of all public utilities" under the Public Utilities Act. 220 ILCS 5/4-101. Public utilities are defined in the statute under Section 3-105, and do not include the DCEO. Illinois courts have found that the Commission "is a creation of the state legislature and possesses only the authority and power necessary to supervise all public utilities and to administer the regulatory laws" under the Public Utilities Act. Alhambra-Grantfork Telephone Co. v. Illinois Commerce Commission, 358 Ill. App. 3d 818, 823 (2005). Therefore, the Commission has the authority to administer the regulatory laws of the PUA, including Sections 8-103(e) and 8-104(e), which are applicable to the DCEO. Any further supervision of the DCEO, beyond what is specifically provided for under the Public Utilities Act, may be outside the authority granted to the Commission by the General Assembly.

Accordingly, the AG's arguments should be rejected.

III. CFL CARRYOVER

Staff maintains its position and recommends that the Commission conclude that compact fluorescent lamp ("CFL") carryover savings should be measured in this docket based on the savings values determined for the installation year. Staff Ex. 1.0 at 31. Both the AG and ComEd discuss the CFL carryover issue in their IBs and argue that Staff is "prelitigating" the matter in this docket. AG IB at 22-23; ComEd IB at 11-13.

Both ComEd and the AG appear confused regarding Staff's proposal. Staff does not advocate that CFL carryover in this docket be handled differently from the manner prescribed in the Illinois Technical Reference Manual ("IL-TRM"), recently approved by the Commission in Docket No. 12-0528. Rather, Staff's proposal in the instant proceeding is to ensure that CFL carryover for PY3 remains consistent with the IL-TRM. See Staff Ex. 1.0 at 29-30. The Commission approved the IL-TRM in Docket No. 12-0528 for ComEd beginning with PY5. Staff's concern is that the IL-TRM only impacts the CFL carryover calculations that are performed from *PY5 purchased CFLs*, not the *PY3 purchased CFLs* that are then *installed in PY5*. In light of this, and because the IL-TRM is not applicable to ComEd until PY5, Staff urges the Commission to rule on the CFL carryover issue in this docket and direct ComEd to follow the CFL carryover approach specified in the IL-TRM for PY3 and PY4 purchased CFLs that are ultimately installed in PY5 and PY6. It is Staff's understanding that ComEd has not directed its evaluators to use the IL-TRM in their forecast of PY5 CFL carryover from PY3 or PY4 purchased CFLs in the evaluation reports. Additionally, Staff believes that ComEd is operating under the assumption that the IL-TRM does not apply to the PY3 and PY4 purchased CFLs installed in PY5 and PY6 either. Accordingly, Staff recommends the Commission specify in the final order in the instant docket that, in order to maintain consistency with the IL-TRM, the CFL carryover calculations contained in the IL-TRM for PY5 should be used for CFLs installed in PY5 and PY6, regardless of whether the CFLs were purchased in PY3 or PY4.

IV. COST-EFFECTIVENESS CALCULATIONS

Staff maintains that it is appropriate to provide the Commission an opportunity to

evaluate and determine whether the programs were cost-effective concurrently with measuring the savings achieved. This docket is the appropriate place to review the cost-effectiveness of the programs in the ComEd portfolio for the three-year period that encompasses ComEd's Plan 1.

The IB of the AG discusses the AG's interpretation of Staff's proposals regarding how ComEd's cost-effectiveness analysis should be performed. AG IB at 26-28. However, for the most part, the AG misinterprets Staff's specific proposals. The AG initially discussed these proposals in rebuttal testimony; thus, Staff had no opportunity to respond to the AG's comments in pre-filed testimony. Further, the AG did not address these issues in its Pre-Trial Memorandum in this docket. Therefore, Staff contends that the Commission need not make a decision regarding Staff's proposals for how ComEd should perform cost-effectiveness analysis in this docket, considering ComEd never filed the requested three-year cost-effectiveness analysis for which Staff's cost-effectiveness proposals applied to.

With respect to the proposal that ComEd should allocate all "program-related" costs to each program in performing the cost-effectiveness analysis, Staff generally concurs with the AG's discussion of this issue in its IB. AG IB at 26. The Appliance Recycling Program marketing costs are those that are specific to the Appliance Recycling Program, meaning if the Appliance Recycling Program did not exist, then the Appliance Recycling Program marketing expenses would not be incurred. Thus, it appears that the AG concurs with Staff on this particular recommendation as the AG's IB states: "Assuming this marketing was specific to this particular program, Mr. Mosenthal concurred that it is correct that the costs associated with it should be counted

as a program cost.” Id.

Additionally, with respect to the proposal that the payment made to customers for the Appliance Recycling Program should be recognized as a cost in the cost-effectiveness analysis, Staff does not concur in the AG's discussion of this issue. Id. at 27. Further, since the filing of direct testimony in this docket, the Commission has since made a decision regarding this cost classification issue associated with the Appliance Recycling Program's cost-effectiveness analysis. Final Order at 270, Illinois Power Agency: Petition for Approval of Procurement Plan, Docket No. 12-0544 (December 19, 2012). In that matter, the Commission concluded “that the use of a one-year screening period and Staff's proposed treatment of the customer incentive [for the Appliance Recycling Program] are reasonable.” Id. Hence, it is not necessary for the Commission to make a decision on this issue in this docket since it has already made a decision in a different docket regarding this program.

Lastly, with respect to the proposal that the Company allocate certain costs consistently across the three years in the cost-effectiveness analysis, Staff does not concur in the AG's discussion of this issue. AG IB at 28. While Staff does not necessarily oppose the specific arguments that the AG makes, Staff notes that the AG misinterprets Staff's recommendation. Staff does not recommend “taking all costs over a three year period and averaging them and allocating them evenly across all years” as the AG alleges. Id. Staff's recommendation relates to the fact that ComEd has classified costs in its total resource cost test (“TRC test”) cost-effectiveness analysis inconsistently across program years. For example, for the Multi-Family Direct Install Program, ComEd classified the cost for directly installing the measures as a program

cost in the TRC test analysis in its Plan 2 filing with the Commission; however, in the PY2 TRC test analysis for this same program, ComEd removed the entire cost of directly installing the measures from the TRC test cost-effectiveness analysis of the program, which inappropriately inflates the TRC test results for the program for that specific year, making any attempt at comparing the cost-effectiveness of the program across program years meaningless. Staff's recommendation that the Company treat certain costs consistently across program years in its cost-effectiveness analysis would allow the Commission and other interested parties to make more meaningful comparisons among the cost-effectiveness results for a specific program across program years. *See generally*, Staff Ex. 2.0 at 27-30, Docket No. 10-0537.

V. RETROACTIVE EVALUATION RESULTS

ComEd recommends that the Commission should reject Staff's proposal to retroactively apply evaluation results for the Appliance Recycling Program. ComEd IB at 6. However, ComEd fails to note that the Commission has already rejected its recommendation in the *Plan 1 Order*, when the Commission only allowed "deemed" savings values for light bulbs. *Plan Year 1 Order* at 40-41. Thus, Staff maintains its position and recommends that the Commission reject ComEd's recommendation which is inconsistent with the Commission's *Plan 1 Order*.

V. CONCLUSION

For the reasons set forth above Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations consistent with this Reply Brief and Staff's Initial Brief.

Respectfully submitted,

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